Section 9 of the Interstate Commerce Act, however, deprives state courts of jurisdiction over shippers' suits for its violation. *Van Patten* v. *Chicago, M. & St. P. R. Co.*, 74 Fed. 981; *Copp* v. *Louisville & Nashville R. Co.*, 43 La. Ann. 511, 9 So. 441. The fact that the carrier sues in the principal case would seemingly take it out of this section and be a short ground for the decision. The court, however, goes on the broader but correct theory that the carrier sues for services rendered and not for the violation of the statute, which merely annuls the agreement as to special charges and fixes the amount of recovery. *Georgia R. Co.* v. *Creety*, 5 Ga. App. 424, 63 S. E. 528. *Cf. Gerber* v. *Wabash R. Co.*, 63 Mo. App. 145. An analogous situation where the state court's jurisdiction is clear arises in suits by the shipper, in which, to avoid the defense of special contract, he relies upon a federal statute forbidding limitation of the carrier's common-law liability. *Galveston, H. & S. A. Ry. Co.* v. *Piper Co.*, 52 Tex. Civ. App. 568, 115 S. W. 107; *Fry* v. *Southern Pacific Co.*, 247 Ill. 564, 93 N. E. 906.

LIMITATION OF ACTIONS — ACCRUAL OF ACTION — BREACH OF CONTRACT TO MAKE GIFT AT DEATH IN CONSIDERATION OF SERVICES DURING LIFE. — The plaintiff promised to take the defendant's testatrix into her house and care for her as long as she lived, and the latter promised to give the plaintiff $70 per month and $20,000 at her death. In 1900 the defendant's testatrix left the plaintiff's house and made a similar agreement with the defendant, with whom she remained till her death in 1907, and to whom she left her property. The plaintiff now brings suit for her legacy and the defendant pleads that the action is barred by the Statute of Limitations. *Held*, that the plaintiff can recover for the breach of contract by the testatrix. *Ga Nun* v. *Palmer*, 46 N. Y. L. J. 257 (N. Y., Ct. App., Oct. 3, 1911).

The decision in this case is reached by applying the doctrine of anticipatory breach, whereby, when one party to a contract repudiates it before the time set for performance, the other may sue immediately or await the time when performance is due. *Frost* v. *Knight*, L. R. 7 Exch. 111. See *Howard* v. *Daly*, 61 N. Y. 362, 374. It follows that, if the injured party elects not to sue, the Statute of Limitations will not begin to run until the time appointed for performance. *Foss-Schneider Brewing Co.* v. *Bullock*, 59 Fed. 83. There is difficulty, however, in applying this reasoning to the principal case, for the breach alleged is not anticipatory. Even where the theory of anticipatory breach is rejected, it is held that when one party by refusing necessary coöperation prevents the other from performing, the injured party can at once sue for the breach of the implied promise not to prevent performance and recover in damages the present value of his entire claim. *Edwards* v. *Slate*, 184 Mass. 317, 68 N. E. 342; *Parker* v. *Russell*, 133 Mass. 74. The earlier New York decisions recognized this principle and held that the statute began to run immediately. *Bonesteel* v. *Van Etten*, 20 Hun (N. Y.) 468; *Henry* v. *Rowell*, 31 N. Y. Misc. 384, 64 N. Y. Supp. 488, aff'd in 63 N. Y. App. Div. 620, 71 N. Y. Supp. 1137. *Cf.* 24 HARV. L. REV. 676.

LIMITATION OF ACTIONS — OPERATION AND EFFECT OF BAR BY LIMITATION — RIGHT TO CONTRIBUTION OF CO-OBLIGOR ON NOTE UNDER SEAL. — The plaintiff and the defendant executed a joint note under seal, which the plaintiff paid in full, taking an assignment to himself. Suit was brought for contribution after the period of limitation as to actions on simple contracts had expired, but before the expiration of the period for actions in equity and on contracts under seal. *Held*, that the plaintiff's claim is barred. *Liverman* v. *Cahoon*, 72 S. E. 327 (N. C.).

The general rule is that a co-obligor who has paid the joint obligation is entitled to be subrogated to all the rights and remedies against the defaulting

co-obligor which the creditor had before payment. *Orem* v. *Wrightson*, 51 Md. 34; *Smith* v. *Latimer*, 54 Ky. 75. The theory is that even though the obligation is discharged as to the creditor, in equity both it and the securities are regarded as assigned to the paying co-obligor. *Lumpkin* v. *Mills*, 4 Ga. 343. See 4 POMEROY, EQUITY JURISPRUDENCE, 3 ed., § 1419. If the doctrine were fully applied in the principal case, since the creditor would not be barred, the plaintiff could recover in equity. See *Hull* v. *Myers*, 90 Ga. 674, 684, 16 S. E. 653, 655. But the weight of authority denies subrogation when the sole object of the suit in equity is to avoid the Statute of Limitations. *Faires* v. *Cockerell*, 88 Tex. 428, 31 S. W. 190, 639; *Burrus* v. *Cook*, 215 Mo. 496, 114 S. W. 1065. The claim in the principal case is for contribution only. *Chipman* v. *Morrill*, 20 Cal. 131. The statutory period for implied contracts should apply. *Johnston* v. *Belden*, 49 Ia. 301. Even though the claim was originally enforceable in equity, the proper construction of the Statute of Limitations would require the suit in equity to be barred when the identical claim is outlawed at law. *Junker* v. *Rush*, 136 Ill. 179, 26 N. E. 499. In reality the facts constitute no cause for equitable relief. *Sexton* v. *Sexton*, 35 Ind. 88.

MECHANICS' LIENS — CONSTITUTIONALITY OF LAW GIVING LIEN IN SPITE OF WAIVER BY PRINCIPAL CONTRACTOR. — A statute provided for a lien in favor of sub-contractors and material men, "whether or not the original contractor could have obtained a lien or was by contract or conduct divested of the right to obtain a lien." *Held*, that this portion of the act is unconstitutional, as a deprivation of property without due process of law. *Kelly* v. *Johnson*, 44 Chic. Leg. News 89 (Ill., Sup. Ct.). See NOTES, p. 274.

MORTGAGES — EQUITABLE MORTGAGES — WHETHER AFTER-ACQUIRED PROPERTY CLAUSE INCLUDES PROPERTY ACQUIRED BY A COMPANY INTO WHICH MORTGAGOR HAS MERGED. — A railroad company mortgaged to its bondholders all its property, including that which should be thereafter acquired by the company to replace worn-out equipment. The company merged with another, and the consolidated company bought a freight car to replace an old one. The mortgage was foreclosed and the property sold to the plaintiff. *Held*, that the new freight car was properly included in the sale. *National Bank of Wilmington & Brandywine* v. *Wilmington, N. C. & S. Ry. Co.*, 81 Atl. 70 (Del., Ct. Ch.).

The doctrine of *Holroyd* v. *Marshall* seems to proceed upon the ground that a contract to mortgage after-acquired property is specifically enforceable in equity when the property is acquired. See 19 HARV. L. REV. 557. A consolidated company necessarily assumes the contract liabilities of all of its constituent corporations. DEL. LAWS, 1901–03, c. 394, § 60. But if the contract only included property to be acquired by the mortgagor, no statute could extend it to that acquired by the consolidated company, which is a distinct legal entity. *Shields* v. *Ohio*, 95 U. S. 319. As a question of construction, however, a reference to the mortgagor may perhaps include the new corporation, popularly regarded as the old company in a new form. This ambiguity would not exist as to a vendee of the mortgagor. *Hinchman* v. *Point Defiance Ry. Co.*, 14 Wash. 349, 44 Pac. 867. But in the principal case the court may fairly approximate the intentions of the party from all the circumstances of the mortgage, and the result reached seems in accord with justice. *Cf. Hamlin* v. *Jerrard*, 72 Me. 62. *Contra*, *New York Security & Trust Co.* v. *Louisville, etc. R. Co.*, 102 Fed. 382, 398. A different result should be reached if the terms as applied to the consolidated company created a greater liability than that contemplated for the mortgagor. *Cf. Pullman's Palace Car Co.* v. *Missouri Pacific Ry. Co.*, 115 U. S. 587, 6 Sup. Ct. 194; *Chicago, etc. Ry. Co.* v. *Kansas City, etc. R. Co.*, 38 Fed. 58.